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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV08-8031-PHX-MHM

Center for Biological Diversity; Grand
Canyon Trust; and Sierra Club,

Plaintiffs,

vs.

Richard Stahn, in his official capacity as
District Ranger for the Tusayan Ranger
District, on the Kaibab National Forest;
and United States Forest Service, an
agency in the U.S. Department of
Agriculture,

Defendants.

ORDER

The Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary Injunction with this Court March 24, 2008. The Court held a hearing on April 4, 2008, at which the TRO was granted, and later converted to a preliminary injunction at the request and agreement of the parties. The intervenor, Vane Minerals, requested that the Court impose a \$100,000 bond; the Plaintiffs requested that there be no bond, or a nominal bond only. The Court imposed upon the Plaintiffs a bond in the amount of \$5,000¹, but ordered the Plaintiffs to file a memorandum demonstrating why the bond should not be increased. The Plaintiffs filed their memorandum on April 7, 2008, and Vane filed a response on April

¹The Plaintiffs lodged the \$5,000 bond with the Court on April 7, 2008.

1 8, 2008. (Dkt. #55, 56). After consideration of the memorandum and response, the Court
2 issues the following order.

3 The Plaintiffs made a sufficient showing of the potential harm to their interests if a
4 substantial bond were to be imposed. They highlight a long line of cases that have
5 consistently waived the bond requirement or imposed only a nominal bond in public interest
6 environmental litigation. See, e.g., Cal. ex. rel. Van De Kemp v. Tahoe Reg'l Planning
7 Agency, 766 F.2d 1319, 1319 (9th Cir. 1985) (no bond); Friends of the Earth v. Brinegar, 518
8 F.2d 322, 323 (9th Cir. 1975) (\$1,000 bond); Natural Resources Defense Council v. Morton,
9 337 F. Supp. 167, 168-69 (D.D.C. 1971) (\$100 bond); Environmental Defense Fund v. Corps
10 of Engineers, 331 F. Supp. 925, 927 (D.D.C. 1971) (\$1 bond).

11 The Plaintiffs also provided affidavits from directors of each of the Plaintiff
12 organizations, detailing the chilling impact that a substantial bond would have on the ability
13 of the organizations to pursue litigation and programs in the public interest. (Dkt. #55
14 Exhibits 2-4).

15 Vane's response to the Plaintiffs' memorandum relies heavily on Save Our Sonoran,
16 Inc. v. Flowers to support its contention that the bond should be increased. 408 F.3d 1113
17 (9th Cir. 2005). It asserts that the Flowers case stands for the proposition that the Ninth
18 Circuit "imposes a burden on the public interest group to demonstrate that a particular bond
19 amount would cause undue hardship." (Dkt. #56). The Court disagrees with Vane's reading
20 of the case, but finds that the Plaintiffs have, in any event, made such a showing.
21 Furthermore, Vane does not attempt to rebut or distinguish the cases cited by the Plaintiff
22 that impose nominal or no bond on public interest Plaintiffs. In fact, the Flowers opinion on
23 which Vane relies confirms this principle, stating, "the legal proposition urged by [the
24 defendant] would contradict our long-standing precedent that requiring nominal bonds is
25 perfectly proper in public interest litigation." Flowers, 408 F.3d at 1126.

26 The Plaintiffs requested that the Court consider reducing the bond. While the Court
27 is persuaded that a nominal bond is appropriate in this case, in light of the fact that the three
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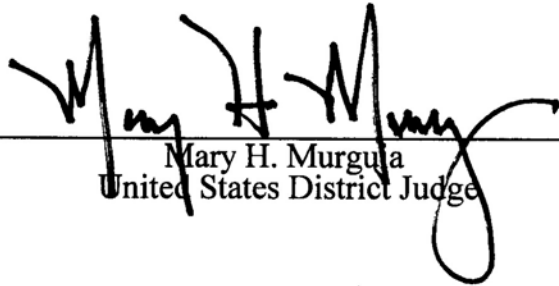
1 Plaintiffs can apportion the bond among themselves, the Court will leave the \$5,000 bond
2 undisturbed.

3 Accordingly,

4 **IT IS ORDERED** that the bond be set at \$5,000.

5 DATED this 10th day of April, 2008.

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Mary H. Murgula
United States District Judge